

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Scott D. Hardy  
Serial No. : 10/774,895  
Filed : February 9, 2004  
Title : INFLATABLE CRIB

Art Unit : 3671  
Examiner : Tara L. Mayo  
Conf. No. : 8757

**Mail Stop Appeal Brief - Patents**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

BRIEF ON APPEAL

**(1) Real Party in Interest**

Linckia, LLC.

**(2) Related Appeals and Interferences**

None known.

**(3) Status of Claims**

Claim 1 is canceled, and claims 2-32 are pending in the case. Claims 11 and 30 are independent. This is an appeal from the decision of the examiner in a Final Office Action dated November 20, 2006, rejecting pending claims 2-32. Claims 11-14, 19-22, 24-26, and 30-32 were rejected under 35 U.S.C. 103(a) for obviousness over U.S. 3,763,506 ("Szego") in view of U.S. 5,881,408 ("Bashista"). Claim 15 was rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,739,527 ("Kohus"). Claims 16 and 17 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of U.S. 3,137,870 ("Fink"). Claims 18, 27, 2-6, and 8-10 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 5,291,623 ("Artz"). Claims 23, 28, and 29 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,815,153 ("Bleser"). Claim 7 was rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser.

Claims 2-32 are the subject of this appeal.

#### **(4) Status of Amendments**

All amendments have been entered. The appellant has filed a Notice of Appeal on **April 18, 2007.**

#### **(5) Summary of Claimed Subject Matter**

The appellant's claimed subject matter relates to an inflatable crib. In general, the crib is lightweight and portable. The side panels and the bottom platform are formed of materials that are safe (e.g., non-toxic) and comfortable to a child when the crib is inflated. When the crib is no longer required to be used, the air is released from the crib. The crib can then be rolled into a compact lightweight package for transportation or storage. (See Specification, page 2, lines 11-17).

For safety precautions, the inflatable crib includes a protective member, for example, a mesh or a webbing attached to the inner walls of the crib. (See Specification, page 2, lines 23-24, page 5, line 26 to page 6, line 3). The protective member seals the inflatable side panels from the child so that the child cannot puncture them and accidentally deflate the crib. (See Specification, page 2, lines 24-25). The protect member also acts as a seal to prevent the child from becoming entangled among the deflated material. (See Specification, page 2, line 25). In some embodiments of the claimed subject matter, the protective member is positioned to prevent the child's head from moving into the corner areas of the crib. (See, e.g., members 31 in FIGS. 6 and 7; Specification, page 5, lines 26-27). In this case, should the crib accidentally deflate, the protective member helps prevent the child's head from getting trapped in the deflated corner areas of the crib, where the risk of suffocation is higher. (See Specification, page 2, line 26 and page 6, line 1).

Claim 11 recites a structure including a base platform configured to support a child (specification at page 3, lines 14-16), a plurality of inflatable side panels extending vertically from and surrounding the base platform (specification at page 3, lines 14-16), the base platform and side panels defining an enclosure for the child (specification at page 3, lines 14-16), and a protective member sealing the inner, inflatable panels from the child (specification at page 5, lines 27-28).

Claim 30 recites an inflatable crib including a base platform configured to support a child (specification at page 3, lines 14-16), a plurality of inflatable side panels extending vertically from and surrounding the base platform (specification at page 3, lines 14-16), the base platform and side panels defining an enclosure for the child (specification at page 3, lines 14-16), and a protective member for obstructing the child's access to the inflatable panels of the crib, the protective member sealing the inner, inflatable panels from the child (specification at page 5, lines 27-28), thereby preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate (specification at page 5, line 31 to page 6, line 1).

**(6) Grounds of Rejection to be Reviewed on Appeal**

- (i) Did the examiner properly reject claims 11-14, 19-22, 24-26, and 30-32 under 35 U.S.C. 103(a) for obviousness over U.S. 3,763,506 ("Szego") in view of U.S. 5,881,408 ("Bashista")?
- (ii) Did the examiner properly reject claim 30 under 35 U.S.C. 103(a) for obviousness over Szego in view of U.S. 5,881,408 Bashista?
- (iii) Did the examiner properly reject claims 31 and 32 under 35 U.S.C. 103(a) for obviousness over Szego in view of U.S. 5,881,408 Bashista?
- (iv) Did the examiner properly reject claim 15 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,739,527 ("Kohus")?
- (v) Did the examiner properly reject claims 16 and 17 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of U.S. 3,137,870 ("Fink")?
- (vi) Did the examiner properly reject claims 18, 27, 2-6, and 8-10 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 5,291,623 ("Artz")?
- (vii) Did the examiner properly reject claims 23, 28, and 29 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,815,153 ("Bleser")?
- (viii) Did the examiner properly reject claim 7 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser?

## (7) Argument

### Law on Obviousness

It is well established that the burden is on the PTO to establish a prima facie showing of obviousness. *In re Fritsch*, 972 F.2d. 1260 (C.C.P.A. 1972).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. 2143.

“The genius of invention is often a combination of known elements which in hindsight seems preordained. To prevent hindsight invalidation of patent claims, the law requires some ‘teaching, suggestion or reason’ to combine cited references.” *McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339 (Fed. Cir. 2001).

“Even if all its limitations could be found in the total set of elements contained in the prior art references, a claimed invention would not be obvious without a demonstration of the existence of a motivation to combine those references at the time of the invention . . . . The requirement prevents a court from labeling as obvious in hindsight a solution that was not obvious to one of ordinary skill at the time of the invention.” *National Steel Car, Ltd. v. Canadian Pacific Railway, Ltd.*, 357 F.3d 1319 (Fed. Cir. 2004).

“A showing that the motivation to combine stems from the nature of the problem to be solved must be ‘clear and particular, and it must be supported by actual evidence.’” *Group One Ltd. v. Hallmark Cards, Inc.*, 407 F.3d 1297 (Fed. Cir. 2005).

“Section 103 requires assessment of the invention as a whole . . . . This ‘as a whole’ assessment of the invention requires a showing that an artisan of ordinary skill in the art at the time of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would have selected the various elements from the prior art and combined them in the claimed manner . . . .” *Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332 (Fed. Cir. 2005).

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984).

(i) Rejection of claims 11-14, 19-22, and 24-26 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

For the purposes of this appeal only, claims 11-14, 19-22, and 24-26 may be treated as standing or falling together. Claim 11 is representative of this group.

11. A structure comprising:  
a base platform configured to support a child;  
a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and  
a protective member sealing the inner, inflatable panels from the child.

The examiner combined two references, namely Szego and Bashista, to reject claim 11.

Szego teaches a "collapsible crib for children, comprising a member inflatable to form a body having a floor and a circumscribing wall." (See Szego, Abstract). The walls may be "slotted vertically to provide apertures . . . which give the structure more the appearance of a conventional baby's crib." (See Szego, column 1, lines 36-39). The crib is "readily collapsible in all dimensions." (See Szego, column 1, lines 11-12). The body may be "constructed of any suitable material which is . . . flexible . . ." (See Szego, column 1, lines 31-32).

Bashista teaches a "crib liner having side panels made of netting which cover the inside of the crib side rails and having very small opening therein which prohibit a child from putting its fingers or toes therethrough." (See Bashista, Abstract). In conventional baby cribs, as discussed in Bashista, the side rails are constructed such that "babies and toddlers while sleeping or playing in their cribs intentionally or accidentally extend their limbs out of the crib between the slates and have difficulty drawing them back into the crib" due to the rigidity of the side rails. (See Bashista, column 1, lines 8-13). "If this occurs when the child is sleeping, the extended limbs will remain uncovered and become cold, and the child will ultimately awaken." (See Bashista, column 1, line 12-15). Therefore, the "primary object" of the crib liner is to prohibit a child from extending her limbs out of the crib between the side rails. (See Bashista, column 1, lines 54-56). Moreover, another "important object . . . is to provide a crib liner which safely

confines a child within its crib and does not enable the child to climb out of the crib by pulling itself up on the liner over the side rail." (See Bashista, column 1, lines 57-60).

The examiner conceded that Szego fails to teach "a protective member sealing the inner, inflatable panels from the child" and relied on Bashista for this disclosure. The examiner argued that one of ordinary skill in the art would have been motivated to "provide the crib [of Szego] with means for preventing an infant or toddler from extending her limbs out of the apertures in the side panels [as described in Bashista]" (See Office Action dated May 2, 2006, page 4).

According to the examiner,

one might have a desire to prevent a child's hands from passing through apertures in the crib panels in the event that the crib is positioned adjacent an electrical outlet. The combination is additionally capable of performing the recited function of sealing the inner inflatable panels from the child, and further capable of performing the function of preventing a child from rolling or squirming into the corner region. (See Office Action dated November 20, 2006, page 11).

The appellant contends that there is no such motivation to combine Szego with Bashista in such a manner, and that the examiner's reasoning amounts to impermissible hindsight reconstruction. As an initial matter, the examiner's latest concoction that "one might have a desire to prevent a child's hands from passing through apertures in the crib panels in the event that the crib is positioned adjacent an electrical outlet" is completely unsupported by actual evidence found in either Szego or Bashista. Neither reference discusses the dangers associated with proximity to "an electrical outlet."

Even if either reference contemplates such a danger, which the applicant does not concede, there is still no motivation to combine Szego with Bashista to "provide the crib with means for preventing an infant or toddler from extending her limbs out of the apertures in the side panels" in the *manner* intended by Bashista. One skilled in the art reviewing Bashista would have understood that its teaching of a crib liner was to address a safety hazard known to exist with conventional cribs with rigid, e.g., wooden, side rails. Indeed, one safety hazard discussed by Bashista includes the child extending her limbs between the side rails and out of the crib. In this manner, the rigidity of the side rails would render it difficult for the child to draw her limbs back into the crib.

Szego, with its inflatable crib, would render the crib liner of Bashista unnecessary for preventing this safety hazard in the *manner* intended by Bashista. Specifically, while the inflatable walls of Szego can be slotted vertically to provide apertures, the inflatable and collapsible nature of these walls would allow the child to draw her limbs back into the crib through the apertures without difficulty and avoiding injury. In Szego, the rigidity of the side rails that is central to Bashista's concern for the child not being able to draw her limbs back into the crib is not contemplated.

For at least these reasons, the examiner has not shown a motivation to combine Szego with Bashista. Therefore, the examiner has not properly made a *prima facie* case of obviousness, and the appellant respectfully requests withdrawal of the obviousness rejection of claims 11-14, 19-22, 24-26, and 30 over Szego in view of Bashista.

(ii) Rejection of claim 30 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

In addition to the reasons discussed in conjunction with claim 11, the applicant submits that these two references fail to show all of the features of claim 30. In particular, the examiner has failed to show at least the feature of "preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate." As the Examiner concedes, Szego clearly fails to teach a protecting member. Moreover, Bashista does not contemplate collapse of a conventional crib.

For at least these reasons, claim 30 is allowable over Szego in view of Bashista.

(iii) Rejection of claims 31 and 32 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

For the purposes of this appeal only, claims 31 and 32 stand or fall together. Claim 31 is representative of this group.

In addition to the reasons discussed in conjunction with claim 11, the applicant submits that these two references fail to show all of the features of claim 31. In particular, the examiner has failed to show at least the feature of where the "protective member is positioned at a corner region" of the inflatable crib. The protective member, positioned in the corner region, prevents

the child from squirming or rolling into that region where the risk of suffocation is higher should the side panels deflate. As the Examiner concedes, Szego clearly fails to teach a protecting member. Bashista does not contemplate collapse of a conventional crib. Thus, Bashista also fails to teach positioning the protective member specifically at the corner region for addressing the risk of suffocation due to collapse.

For at least these reasons, claims 31 and 32 are allowable over Szego in view of Bashista.

(iv) Rejection of claim 15 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Kohus

Claim 15 is allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Kohus does not cure the deficiencies discussed above in combining Szego with Bashista.

(v) Rejection of claims 16 and 17 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of Fink

Claims 16 and 17 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Kohus in view of Fink do not cure the deficiencies discussed above in combining Szego with Bashista.

(vi) Rejection of claims 18, 27, 2-6, 8-10 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Artz

Claims 18, 27, 2-6, and 8-10 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Artz does not cure the deficiencies discussed above in combining Szego with Bashista.

(vii) Rejection of claims 23, 28, and 29 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Bleser

Claims 23, 28, and 29 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Bleser does not cure the deficiencies discussed above in combining Szego with Bashista.

Applicant : Scott D. Hardy  
Serial No. : 10/774,895  
Filed : February 9, 2004  
Page : 9 of 16

Attorney's Docket No.: 40003-004001

(viii) Rejection of claim 7 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser

Claim 7 is allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Artz in view of Bleser do not cure the deficiencies discussed above in combining Szego with Bashista.

**(8) Claims Appendix**

1. (cancelled)
2. (previously presented) The structure of claim 27 wherein each of the side panels is inflatable individually.
3. (previously presented) The structure of claim 27 wherein the plurality of inflatable side panels is configured to be inflatable from a single valve.
4. (previously presented) The structure of claim 27 wherein the base platform is integral to the side panels.
5. (previously presented) The structure of claim 27 wherein the base platform is inflatable.
6. (previously presented) The structure of claim 27 wherein the base platform comprises a plurality of elongated ribs.
7. (previously presented) The structure of claim 27 wherein the base platform is formed of a woven mesh.
8. (previously presented) The structure of claim 27 wherein each of the side panels has a lower end and an upper end, the lower end having a width greater than the upper end.
9. (previously presented) The structure of claim 27 further comprising a pump to inflate the side panels.
10. (previously presented) The structure of claim 27 wherein the panels are configured to be inflated with air.

11. (original) A structure comprising:
  - a base platform configured to support a child;
  - a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and
  - a protective member sealing the inner, inflatable panels from the child.
12. (original) The structure of claim 11, wherein the protective member is formed of woven mesh.
13. (previously presented) The structure of claim 12, wherein the woven mesh is bonded to at least one of the plurality of inflatable side panels.
14. (previously presented) The structure of claim 13, wherein the woven mesh is heat-sealed to at least one of the plurality of inflatable side panels.
15. (previously presented) The structure of claim 12, wherein the woven mesh is stitched to at least one of the plurality of inflatable side panels.
16. (previously presented) The structure of claim 15 further comprising binding tape positioned between the woven mesh and at least one of the plurality of inflatable side panels.
17. (previously presented) The structure of claim 16 further comprising stitching between the binding tape and the woven mesh and between the binding tape and at least one of the plurality of inflatable side panels.
18. (original) The structure of claim 11 wherein each of the side panels is inflatable individually.
19. (original) The structure of claim 11 wherein the plurality of inflatable side panels is configured to be inflatable from a single valve.

20. (original) The structure of claim 11 wherein the base platform is integral to the side panels.

21. (original) The structure of claim 11 wherein the base platform is inflatable.

22. (original) The structure of claim 11 wherein the base platform comprises a plurality of elongated ribs.

23. (original) The structure of claim 11 wherein the base platform is formed of a woven mesh.

24. (original) The structure of claim 11 wherein each of the side panels has a lower end and an upper end, the lower end having a width greater than the upper end.

25. (original) The structure of claim 11 further comprising a pump to inflate the side panels.

26. (original) The structure of claim 11 wherein the panels are configured to be inflated with air.

27. (original) The structure of claim 11 further comprising an inflatable member attached to an outer periphery of the base platform, the inflatable member configured to support the side panels of the structure.

28. (original) The structure of claim 11 wherein at least one of the inflatable side panels further comprises a region formed of woven mesh.

29. (original) The structure of claim 28 wherein each region formed of woven mesh extends to the base panel.

30. (original) An inflatable crib comprising:  
a base platform configured to support a child;  
a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and  
a protective member for obstructing the child's access to the inflatable panels of the crib, the protective member sealing the inner, inflatable panels from the child, thereby preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate.

31. (previously presented) The structure of claim 11, wherein the protective member is positioned at a corner region of the structure.

32. (previously presented) The inflatable crib of claim 30, wherein the protective member is positioned at a corner region of the inflatable crib, thereby preventing the child from squirming or rolling into the corner region where the risk of suffocation is higher should the side panels deflate.

Applicant : Scott D. Hardy  
Serial No. : 10/774,895  
Filed : February 9, 2004  
Page : 14 of 16

Attorney's Docket No.: 40003-004001

**(9) Evidence Appendix**

None

Applicant : Scott D. Hardy  
Serial No. : 10/774,895  
Filed : February 9, 2004  
Page : 15 of 16

Attorney's Docket No.: 40003-004001

**(10) Related Proceedings Appendix**

None

Applicant : Scott D. Hardy  
Serial No. : 10/774,895  
Filed : February 9, 2004  
Page : 16 of 16

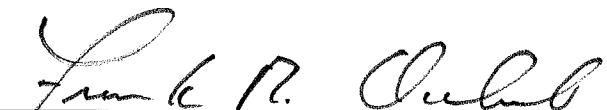
Attorney's Docket No.: 40003-004001

**(11) Conclusion**

The appeal brief fee in the amount of \$250.00 was previously paid, however, please apply all additional charges or credits to Deposit Account No. 50-4189, referencing Attorney Docket Number 40003-004001.

Respectfully submitted,

Date: JUNE 18, 2007



Frank R. Occhiuti  
Reg. No. 35,306

Occhiuti Rohlicek & Tsao LLP  
10 Fawcett Street  
Cambridge, MA 02138  
Telephone: (617) 500-2500  
Facsimile: (617) 500-2499